

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

COURTNI LOTHAMER on behalf of DJW,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

CAUSE NO.: 1:19-CV-485-TLS

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 29]. The Plaintiff's attorney requests attorney fees in the net amount of \$3,718.39 pursuant to 42 U.S.C. § 406(b). The Commissioner filed a Response [ECF No. 30] indicating that she neither supports nor opposes the request for these fees. For the reasons stated below, the Motion is GRANTED.

BACKGROUND

The Plaintiff initiated this action for judicial review of the Commissioner of Social Security's decision denying the Plaintiff's application for supplemental security income. On May 21, 2021, the Court granted the Plaintiff's request on the parties' agreed motion, reversing and remanding for further proceedings. ECF No. 24. On July 6, 2021, the Court awarded \$5,270.00 in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. ECF No. 28.

On remand, the Social Security Administration issued a Notice of Award entitling the Plaintiff to past-due disability insurance benefits in the amount of \$35,953.59, twenty-five percent of which is \$8,988.39. *See* Notice of Award 6, ECF No. 29-5. The Plaintiff's attorney filed the instant motion [ECF No. 29] on March 8, 2022, requesting that the Court award

attorney fees pursuant to § 406(b) in the net amount of \$3,718.39. This amount is based on the retainer agreement between the Plaintiff and the Plaintiff's attorney [ECF No. 29-1], in which the Plaintiff agreed to pay the attorney twenty-five percent of all past-due benefits for work at the federal court level. The requested net § 406(b) award of \$3,718.39 is based on the twenty-five percent of past-due benefits of \$8,988.39 offset by the EAJA fee of \$5,270.00.

ANALYSIS

The Plaintiff's counsel requests a net payment of \$3,718.39 in attorney fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount of attorney fees is consistent with the contingency agreement. The proposed fee equals an effective hourly rate of approximately \$352.49 for the total requested § 406(b) fee award. *See* Pl.'s Mot. 2, ¶ 4 (reflecting 25.5 attorney hours). Such an hourly rate is reasonable given the contingent nature of this case. *See, e.g., Osmun v. Comm'r of*

Soc. Sec., No. 1:16-CV-273, 2020 WL 7334271, at *3 (N.D. Ind. Dec. 14, 2020) (effective hourly rate of \$525); *Niebuhr v. Saul*, No. 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney fees with hourly rates ranging from \$400 to \$1,500). In addition, counsel obtained a great benefit for the Plaintiff in the past-due benefits award.

CONCLUSION

For the reasons stated above, the Court GRANTS the Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 29] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the net amount of \$3,718.39, which already accounts for the offset of EAJA fees.

SO ORDERED on March 24, 2022.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT